

**COURT OF APPEALS
DECISION
DATED AND RELEASED**

SEPTEMBER 24, 1996

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See § 808.10 and RULE 809.62(1), STATS.

NOTICE

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No. 96-0656

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT III**

**IN RE THE ESTATE OF
LILLIAN DALLMAN:**

ESTATE OF LILLIAN DALLMAN,

Appellant,

v.

THEODORE PYKE, JR.,

Respondent.

APPEAL from an order of the circuit court for Marathon County:
JOHN G. BARTHOLOMEW, Reserve Judge. *Reversed.*

Before Cane, P.J., LaRocque and Myse, JJ.

CANE, P.J. The estate of Lillian Dallman appeals an order invalidating a deed from Dallman to her son, Kenneth F. Dallman, and requiring the estate to execute a deed to the same property to Theodore Pyke, Jr. The estate argues that the failure to properly join Kenneth Dallman

individually as a person interested in the action was fatal to the claim. We agree and reverse the order.

The facts are not disputed. The land at issue is a small portion of five acres owned by Theodore Pyke, Sr., whose children are Lillian Dallman, Lorraine Seeley, Donald Pyke, Dolores Lewis, and Theodore Pyke, Jr. The land passed to the children as tenants in common when Theodore Pyke, Sr., died in 1960, and was subject to widow Anna J. Pyke's homestead rights.

In October 1975, Donald Pyke commenced a partition action against Anna J. Pyke, Lillian Dallman, Lorraine Seeley, and Theodore Pyke, Jr.¹ In October 1976, the lawsuit settled. In exchange for a \$12,000 payment to each of them, Lillian Dallman, Lorraine Seeley, Donald Pyke, and Dolores Lewis conveyed the five acres to Theodore Pyke, Jr., on October 22, 1976.

Also in the October 22 settlement, Theodore Pyke, Jr., conveyed to Lillian Dallman and Lawrence, her husband, the .252 acres of land located in the northwest corner of the five-acre parcel, which they used as their homestead. Lillian and Lawrence Dallman gave Theodore Pyke, Jr., a right of first refusal to the property.²

At issue in this lawsuit is the parcel of .252 acres located in the northwest corner of the land. After the death of Lawrence Dallman, Kenneth F. Dallman, son of Lillian Dallman, received the .252 acres in a quitclaim deed from his mother, in which she reserved a life estate.

After the death of Lillian Dallman, Theodore Pyke, Jr., filed with the Probate Branch of the Marathon County Circuit Court a claim against the estate for specific performance of the right of first refusal. The estate filed an objection to the claim. Kenneth F. Dallman was named and given notice of the probate proceedings as the personal representative of the estate, but not as an individual.

¹ Anna J. Pyke died on July 8, 1976, and thereafter had no interest in the land.

² Theodore Pyke, Jr., owned the remaining four plus acres of land until he sold it in 1985.

At the conclusion of a hearing on Pyke's claim, the probate court entered an order concluding that it had personal jurisdiction over Kenneth F. Dallman as an individual, and that the deed from Lillian Dallman to Kenneth F. Dallman was invalid because it breached the right of first refusal given to Theodore Pyke, Jr. The court ordered the execution of a deed for the same property from the estate to Theodore Pyke, Jr.

The estate now appeals this order, raising the following two issues: whether the trial court erred when it decided that it had personal jurisdiction over Kenneth F. Dallman in his individual capacity, and when it interpreted the deed's right of first refusal provision. Because the resolution of the first issue is dispositive of this appeal, we need not consider the merits of the second issue.

Personal jurisdiction is a question of law, which we review de novo. *Marsh v. Farm Bureau Mut. Ins. Co.*, 179 Wis.2d 42, 52, 505 N.W.2d 162, 165 (Ct. App. 1993). The interpretation of probate statutes is also a question of law, which we review without deference to the trial court. See *Estate of O'Neill*, 186 Wis.2d 229, 233, 519 N.W.2d 750, 752 (Ct. App. 1994).

Probate is a series of special proceedings. *Estate of Goldstein*, 91 Wis.2d 803, 810, 284 N.W.2d 88, 92 (1979). The rules and procedures for special proceedings as they appear in chs. 801 to 847, STATS., apply in the absence of other statutorily-prescribed procedures. *O'Neill*, 186 Wis.2d at 233, 519 N.W.2d at 752. However, probate is governed by the specific procedures contained in ch. 879, STATS. *Id.*

All persons interested in a probate dispute must be named in the petition to the probate court. Section 879.01, STATS. According to the statute:

All applications to courts, except motions in matters at issue, shall be made by verified petition. All petitions must show the jurisdiction of the court and the interest of the petitioner. All petitions ... shall also show the names and post-office addresses of all persons interested, so far as known to the petitioner or ascertainable by him or her with reasonable diligence
....

Id. All persons interested in probate proceedings must receive formal notice. Section 879.03(2), STATS. Notice may be achieved by mail, personal service or publication. Section 879.05, STATS. The notice requirement may be satisfied by waiver of notice or by appearance. Sections 879.09, 879.11, STATS.

The failure to give formal notice to all persons interested in a probate dispute defeats the trial court's personal jurisdiction over those individuals. See *Estate of Phillips*, 92 Wis.2d 354, 362, 284 N.W.2d 908, 913 (1979). As stated by our supreme court,

The law in Wisconsin holds that where the respondent fails to give legal notice to the proper parties in interest ... all orders and judgments entered in the previous probate proceedings would be void as the failure to give legal notice would result in a defect of jurisdiction rendering the proceeding ineffective as to those parties in interest to whom no notice was given.

Id.

Kenneth F. Dallman, as title owner to the disputed land, was a person interested in this claim against the estate of Lillian Dallman. See § 851.21(1)(d) and (e), STATS. Here, Theodore Pyke, Jr., was attempting to invalidate the quitclaim deed transferring Lillian Dallman's interest in the disputed land to Kenneth F. Dallman. The trial court's only reference to its personal jurisdiction over Kenneth F. Dallman was contained in its written decision of October 15, 1995:

The Court's jurisdiction over Kenneth Dallman, both as personal representative of the estate of Lillian Dallman and as an individual, is based on the fact that there is controversy as to the title of real estate involved and determination of that controversy is incidental to and necessary for the complete administration of the estate.

Although Theodore Pyke, Jr., gave Kenneth F. Dallman notice to the proceedings as the personal representative of the estate, he failed to give notice to Kenneth F. Dallman as an individual. The record shows no waiver of notice. The unsuccessful efforts of Theodore Pyke, Jr., to have Kenneth Dallman stipulate to personal jurisdiction indicate that he was aware that Dallman was a person interested in the probate proceedings. The lack of notice violated the statute and, because Kenneth F. Dallman was not properly made a necessary party to the proceedings, the order is set aside.

We recognize that one may view this reversal as hypertechnical in that Kenneth Dallman was present in these proceedings in his capacity as personal representative for the estate. However, the effect of these proceedings was to set aside Kenneth Dallman's title to this property, thereby making him an interested and necessary party. Without proper jurisdiction over Dallman, the court lacks authority to set aside the deed.

Without the proper joinder of all interested parties, it is premature for this court to decide the merits of the interpretation of the right of first refusal. Because Kenneth F. Dallman was not properly named and given notice as an individual, the court's order is reversed.

By the Court. — Order reversed.

Not recommended for publication in the official reports.